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FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AUG 27 2 45 PM '86

BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK
EPA REGION VI

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IN RE	)	
	)	RCRA-VI-503-H
MOUNTAIN PINE PRESSURE	)	
TREATING COMPANY, INC.	)	
	)	
Respondent	)	

1. Resource Conservation and Recovery Act - Penalty Assessment - Based upon data submitted to the Complainant by the Respondent, in reference to its inability to pay a penalty, the Agency elected to waive the penalty aspect of its complaint.

2. Resource Conservation and Recovery Act - Accelerated Decision - Where, based upon a stipulation of facts entered ito between the parties, it is clear that the Respondent has violated the Act and regulations in the manner alleged in the complaint, an accelerated decision as to Respondent's liability shall issue.

3. Resource Conservation and Recovery Act - Accelerated Decision - Pursuant to 40 C.F.R. § 22.20(b), if an accelerated decision disposes of all issues before the Court, it constitutes an initial decision.

Appearances:

David Cohen, Esquire
U.S. Environmental Protection Agency
Dallas, Texas
(For the Complainant)

Mark Roberts, Esquire
Malvern, Arkansas
(For the Respondent)

INITIAL DECISION

This matter is before the Court on a motion for an accelerated decison pursuant to 40 C.F.R. § 22.20. In support of the motion, the Complainant alleges that the stipulation attached to the motion shows that the Respondent committed the violations as set forth in the Complaint. The Respondent filed no response to the motion.

The attached stipulation is adopted as the finding of facts in this case.

Inasmuch as the stipulation reveals that the Respondent committed the acts which form the basis for the Complaint, it is hereby found to be liable for the violations alleged therein.

In its brief in support of the motion, the Complainant states that it has reviewed the evidence submitted to it by the Respondent on the question of ability to pay any penalty and has concluded that the Respondent's claim on this issue is correct. Accordingly, the Complainant has decided to waive the assessment of any penalty in this matter. The Court, having no reason to question this decision, accepts it.

The Complainant moves, however, for the issuance of an order compelling the Respondent to perform certain duties mandated by the Act and its regulations. The Court has reviewed the proposed order and finds its terms to be appropriate.

ORDER[1]

I hereby find the Respondent in violation of the Act (42 U.S.C. § 6828) as alleged in the Complaint filed by the U.S. Environmental Protection Agency. No penalty is assessed therefore. The following Compliance Order is entered against the Respondent:

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, Respondent is hereby ordered to take the following actions within thirty (30) days of receipt of this Order.

1. Immediately upon receipt of this Order, cease adding any waste to the surface impoundments.

2. Complete and submit a proper Notification of Hazardous Waste Activity. Include all hazardous waste streams handled by the facility.

3. Complete and submit a proper revised Part A permit application reflecting the current ownership of the facility, to the Arkansas Department of Pollution Control and Ecology (ADPC&E) and EPA in accordance with 40 C.F.R. § 260.72(d) and Section 3(a)(7) of the Arkansas Hazardous Waste Management Code.

4. Obtain financial assurances for closure and post-closure as required by 40 C.F.R. 265 and Section 3(a)(6). Submit proof of compliance to ADPC&E and EPA.

5. Develop and submit to EPA and the ADPC&E for approval a closure plan which includes an appropriate cost estimate as required by 40 C.F.R. §§ 265.112 and 265.142 and Section 3(a)(6).

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[1]Unless an appeal is taken pursuant to Section 22.30 of the rules of practice or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. (See § 22.27(c)).

6. If the closure plan does not provide for "clean closure" as described at 40 C.F.R. § 265.228(a), then develop and submit to EPA and the ADPC&E a post-closure plan with the appropriate cost estimate as required by 40 C.F.R. §§ 265.118 and 265.144 and Section 3(a)(6).

DATED: August 25, 1986

Thomas B. Yost
Administrative Law Judge

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VI
DALLAS, TEXAS

IN THE MATTER OF:	§	
MOUNTAIN PINE PRESSURE TREATING CO. PLAINVIEW, ARKANSAS,	§	DOCKET NO. RCRA VI-503-H
EPA I.D. Number ARD049658628,	§	STATEMENT OF STIPULATIONS
Respondent.	§	

WHEREAS, the United States Environmental Protection Agency, hereinafter referred to as "EPA" or "Complainant", issued to Mountain Pine Pressure Treating Co., hereafter "Respondent", a Compliance Order and Notice of Opportunity for Hearing on March 29, 1985, and amended May 8, 1986, pursuant to the Resource Conservation and Recovery Act, hereinafter "RCRA" as amended, 42 U.S.C. Section 6901 et seq., for violations of RCRA.

WHEREAS Respondent answered the Compliance Order on April 30, 1985, and the amended Order on May 16, 1986, and requested an opportunity for a hearing.

It is hereby stipulated and agreed by and between Complainant and Respondent, that the facts set forth below are undisputed and true. It is agreed by and between the Complainant and Respondent that this stipulation, or any of the numbered paragraphs contained herein, is admissible in evidence in this proceeding subject to objections as to relevance.

IT IS HEREBY STIPULATED by and between the parties as follows:

1. Respondent is a "generator" of "hazardous waste" and an "owner or operator" of a "hazardous waste management facility" located on Highway 28 West, Plainview Arkansas, which is used for treatment, storage,

or disposal of hazardous wastes as those terms are defined in Section 2 of the Arkansas Hazardous Waste Management Code ("Code"), and 40 CFR Section 260.10, as adopted by Section 3 of the Code.

2. Respondent is a "person", as that term is defined in Section 2 of the Code, and defined in §82-4203(i) of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979); Arkansas Statute §824201 et seq. ("Act"), and is therefore subject to the provisions of RCRA and the regulations promulgated thereunder.

3. On or about August 17, 1980, the original owner of the facility notified as a generator and a treater, storer, or disposer of the following hazarous wastes:

A. Hazardous wastes from specific sources identified at 40 CFR §261.32 and Section 3(a) of the Code; K001

B. Commercial Chemical Products, Manufacturing chemical intermediates, or off specification commercial chemical products identified at 40 CFR §261.33, and Section 3(a) of the Code identified as P090.

4. On or about November 14, 1980, the original owner of the facility filed a Federal Part A permit application indicating the management of hazardous waste in surface impoundment(s). However, the present owners have failed to submit proper notification and a Part A permit application as required by Sections 3005(a) and 3010(a) of RCRA, 42 U.S.C. §6925 and §6930, as of January 14, 1985.

5. Respondent generates and/or treats, stores, and disposes of "hazardous waste", as that term is defined in 40 CFR Section 261.3, as adopted by Section 2 and 3 of the Code.

6. On or about January 14, 1985, Respondent was inspected by representatives of ADPC&E and the EPA.

7. On or about January 14, 1985, the Respondent had not submitted a revised Federal or State Part A permit application.

8. On or about January 14, 1985, the Respondent did not have a waste analysis plan at the facility.

9. On or about January 14, 1985, Respondent had only one (1) warning sign located at the main gate. There was an insufficient number of signs to be seen from any approach to the active portion of the facility.

10. On or about January 14, 1985, the Respondent did not have a written inspection schedule at the facility.

11. On or about January 14, 1985, the Respondent did not have an inspection log at the facility.

12. On or about January 14, 1985, the Respondent did not have a personnel training program or the required personnel training documents at the facility.

13. On or about January 14, 1985, the Respondent did not have a contingency plan detailing the emergency management of hazardous waste at the facility.

14. On or about January 14, 1985, the Respondent did not have documentation of financial assurance for closure on file with EPA or the ADPC&E.

15. On or about January 14, 1985, the Respondent did not have documentation of financial assurance for sudden accidental occurrences on file with the EPA or the ADPC&E.

16. On or about January 14, 1985, the Respondent did not have documentation of financial assurance for nonsudden accidental occurrences on file with the EPA or the ADPC&E.

17. On or about January 14, 1985, the Respondent did not have a Closure Plan available at the facility.

18. On or about January 14, 1985, the Respondent had not made arrangements with local authorities.

19. On or about January 14, 1985, the Respondent did not have a written operating record at the facility.

20. On or about January 14, 1985, the Respondent had a dirt dike with inadequate protective covering around the "Pentachlorophenol" surface impoundment.

21. On or about January 14, 1985, the Respondent did not have any groundwater data, plans, or analysis at the facility. Available information from the ADPC&E indicates that the full extent of the uppermost aquifer was not determined and that the wells at the facility are not screened over the proper interval. During the inspection, only 3 groundwater monitoring wells could be located. In addition, the facility has not properly sampled the groundwater since the change in ownership and/or operators.

22. Respondent satisfied Sections 3010(a) and 3005(e) for a land disposal facility and was granted interim status before November 8, 1984.

23. On or before November 8, 1985, Respondent had failed to (1) submit a Part B permit application and/or (2) certify compliance with all applicable groundwater monitoring and financial responsibility requirements.

24. Respondent did not submit a closure plan to EPA by November 23, 1985, and to date has not submitted a closure plan to EPA.

25. Respondent is financially unable to pay any penalty.

IN WITNESS WHEREOF the parties hereto by their duly authorized attorneys have affixed their signatures on the dates indicated.

AND AGREED TO:

By: Mark Roberts
Mark Roberts
Attorney for Respondent

Dated: 6-27-86

By: David Cohen
David Cohen
Attorney for Complainant

Dated: 7/2/86
DC